

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

CHRISTOPHER FOSTER,

Petitioner,

: Case No. 1:15-cv-713

- vs -

District Judge Michael R. Barrett  
Magistrate Judge Michael R. Merz

RONALD ERDOS, WARDEN,  
Southern Ohio Correctional Facility,

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Respondent.

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**ORDER MOTION FOR CERTIFICATE OF APPEALABILITY**

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This habeas corpus case is before the Court on Petitioner's Combined Notice of Appeal and Motion for Certificate of Appealability (ECF No. 119, 120) as to District Judge Barrett's Orders of December 27, 2018 (ECF Nos. 117, 118).

The first of these Orders (ECF No. 116) adopted Magistrate Judge Reports and Recommendations (ECF Nos. 97 and 105) without modification. Both of those Reports contained recommendations that a certificate of appealability be denied. Therefore the request for a certificate of appealability as to ECF No. 116 is moot because a certificate has already been denied by Judge Barrett's adoption of the underlying Reports.

The second of these Orders (117) overruled Petitioner's Objections to the Magistrate Judge's Transfer Order (ECF No. 108) which transferred to the Sixth Circuit as a second or successive habeas corpus application Petitioner's motion for "Relief Upon Newly-Acquired Evidence for Guaranteed Immediate Release through this Ex Post Facto Prohibition Motion (ECF No. 107). Petitioner requires no certificate of appealability on the Transfer Order as it is already

before the Sixth Circuit as a result of Judge Barrett's decision. Should the Sixth Circuit decide the transfer was improper, it will, in all probability, transfer the case back to this Court upon reversing its determination that the referenced motion is a second or successive habeas application.

Therefore Petitioner's Motion for Certificate of Appealability is DENIED.

January 14, 2019.

s/ *Michael R. Merz*  
United States Magistrate Judge